

WASHINGTON, D. C. 20505

17 AUG 1977

Office of Legislative Counsel

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

In the course of reviewing legislation, we noted that hearings have been conducted on H.R. 13, under which Federal employees may join labor unions, participate in their management, bargain collectively and choose their own bargaining agents. In its present form this bill does not sufficiently recognize the special needs of this Agency or of the other members of the Intelligence Community. For the reasons stated below, we would request that the bill be amended to specifically exempt the Government's foreign intelligence agencies from its provisions.

Section 7111 of this bill states that the head of an agency may apply to the proposed Federal Labor Relations Authority to obtain an exemption from inclusion in a labor "unit" of employees engaged in intelligence activities "which directly affect the national security." This provision, however, is insufficient to protect the personnel and management requirements of the Central Intelligence Agency, the National Security Agency and other components of the Intelligence Community. Specifically, there is no guarantee the Authority would grant such an exemption, nor if it is granted that it could not later be revoked. Even if we were granted an exemption under section 7111 of this bill in a particular instance, this legislation could present a conflict with the statutory authorities of the Director of Central Intelligence.

Congress, recognizing that in certain circumstances the Director of Central Intelligence must have authority to terminate the employment of any officer or employee of the CIA whenever necessary or advisable in the interests of the United States, has granted such authority in section 102(c) of the National Security Act of 1947, as amended. The Director of the National Security Agency has been granted termination authority similar to that of the Director of Central Intelligence (50 U.S.C. 833). Moreover, the Director of Central Intelligence has the statutory authority and responsibility to protect the identity and number of CIA employees under section 6 of the Central Intelligence Agency Act of 1949, as amended.

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In possible conflict with these considerations, however, H.R. 13 apparently envisages recourse to an outside appeals system in the proposed Federal Personnel Policy Board without distinguishing those situations where immediate removal of an employee might be necessary to protect the integrity of a sensitive intelligence project or information. Moreover, compliance with H.R. 13 as drafted could result in the revelation of names of CIA employees and of other information now protected under section 6 of the CIA Act. The security of sensitive foreign intelligence programs conducted by the NSA also could be endangered and its activities disrupted by compliance with H.R. 13.


These statutory authorities, in addition to the fact that the CIA is exempt from the terms of Executive Order No. 11491 (Labor Management Relations in the Federal Service), clearly establish that work stoppages or strikes called by intelligence employees would pose a potentially grave threat to the national security and cannot be tolerated. For example, if employees of the National Security Agency were allowed to unionize, sensitive cryptological information could be disclosed in the course of union negotiations or the settlement of grievances. If we cannot tolerate unions in the military, which is exempt from H.R. 13, it would likewise seem that we cannot permit unionization of employees in organizations designed to provide advance warning of threats to the national security.

We therefore recommend a specific exemption for the Central Intelligence Agency and the other elements of the Intelligence Community. We believe this exemption should be included in section 7103 rather than in section 7111 of H.R. 13 to insure exclusion from all rules and regulations which might be developed by the Authority, the Civil Service Commission, or the Federal Personnel Policy Board. Such an exemption would be in conformance with the provisions of Executive Order No. 11491, and is supported by the provisions of Executive Order No. 10450, the basis for classifying CIA positions as "sensitive."

This letter has been coordinated with the National Security Agency. We would appreciate any thoughts you may have on this subject, and we stand ready to provide additional support in developing the Administration's position on this legislation.

Sincerely,

SIGNED


Acting Legislative Counsel

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